

# ANDREW O'BRIEN

Year of call - 2011

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## AREAS OF PRACTICE

Alternative Dispute Resolution  
Appellate  
Commercial  
Criminal  
Defamation  
Equity  
Inquests/Inquiries

## EDUCATION

LL.B (Hons) – University of Queensland (2007)  
Grad Dip PLEAT – Griffith University (2008)

## CAREER HISTORY

In 2008 I worked as a judge's associate for a judge of appeal in the Supreme Court of Queensland. In 2009 I commenced practising as a solicitor in a prominent boutique Brisbane firm. The main, but not exclusive focus, of my practice at that firm was appellate criminal work both before the Queensland Court of Appeal and the High Court. My work at the firm also included administrative law, defamation and some criminal trial work.

In 2011 I commenced practice at the Bar from Carbolic Chambers. I also maintain chambers in Sydney.

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## CURRENT AND RECENT CASES

### Regulatory investigations

I am currently briefed in matters connected with the initial public offering of Nuix Ltd, the liquidation of the Forum Group of Companies, bank remediation processes and other confidential regulatory investigations.

I also acted for a c-suite executive throughout a four-year ASIC investigation. Ultimately my client was charged with offences against sections 1307 and 1309 of the *Corporations Act*. With Phil Boulten SC, I appeared for the client at an eight week District Court trial in Sydney. My client was acquitted with the judge directing the jury to return three not-guilty verdicts.

[\*R v Thompson; R v Farrugia\*](#) [2019] NSWDC 219

[\*R v Thompson; R v Farrugia \(No. 2\)\*](#) [2019] NSWDC 329

[\*R v Thompson; R v Farrugia \(No. 3\)\*](#) [2019] NSWDC 332

### Shareholder and partnership disputes

I was recently retained in respect of a valuable shareholders' dispute involving a civil construction company. I was briefed with senior counsel in arbitral proceedings which settled shortly before the commencement of the arbitration.

I am also currently involved in several other matters of a similar nature and have practised extensively in disputes of this kind since I commenced at the bar. The matters in which I have and continued to be briefed in involve complex corporate, trust and partnership structures usually in circumstances where the relationship between the partners and venturers has broken down.

I completed a trial in November 2020 in the District Court (leading Morgan Windsor) in which our clients successfully resisted orders that they pay money following the taking of partnership accounts, and instead obtained orders that the applicants pay monies to our clients. I also recently appeared in a hearing arising out of the breakdown of a relationship between investors (with Clothier QC): [\*Yue v CN-AU Capital Pty Ltd & Anor\*](#) [2021] QSC 248

### Civil penalty proceeding

I acted for a large private company throughout the course of an ACCC investigation and civil penalty proceeding. Following negotiations, the matter was resolved in proceedings before the Federal Court in Sydney. In the Federal Court proceedings I appeared with Michael Hodge QC and Morgan Clarke.

[\*Australian Competition and Consumer Commission v Panthera Finance Ltd\*](#) (2020) 143 ACSR 486; [2020] FCA 340

### Lease dispute

I was briefed for a tenant in a long-running dispute which resulted in proceedings being taken in the Federal Court in Brisbane and the Supreme Court of Queensland. At various times I appeared with Paul McQuade QC, Glenn Newton QC and Sam McCarthy. The case concerned, amongst other things, the application of the National Energy Retail Law.

[\*Pipe Networks Pty Ltd v 148 Brunswick Street Pty Ltd \(Trustee\)\*](#) (2019) 371 ALR 627; [2019] FCA 598

### Appeal

I appeared for the appellant in a successful appeal from a civil proceeding conducted with a jury. The proceeding was an action for false imprisonment and malicious prosecution. The issue on appeal focused on the respective roles of judge and jury in such proceedings, and the sufficiency of the directions the trial judge gave to the jury

[\*Walker v State of Queensland\*](#) (2020) 5 QR 98; (2020) 92 MVR 462; [2020] QCA 137

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## Proceedings for recovery under a guarantee

I am acting for the plaintiff in the proceeding to recover US\$20M+ pursuant to a deed of guarantee. The proceeding is being defended on the basis of, *inter alia*, an allegation that the secured property was sold at an undervalue. The matter is on the commercial list in the Supreme Court and went to trial in April 2021; judgment is currently reserved. There have been interlocutory proceedings involving an application for a *Norwich Pharmacal* order and to restrain lawyers from acting.

[QNI Metals Pty Ltd v Vannin Capital Operations Ltd](#) [2020] QSC 238

[QNI Metals Pty Ltd v Vannin Capital Operations Ltd](#) [2020] 41 QLR; [2020] QSC 292

[QNI Metals Pty Ltd v Vannin Capital Operations Ltd](#) [2021] QCA 24

## Bribery

With Phil Strickland SC, I am acting for the controlling members of a family with extensive business interests throughout the world in connection with allegations of bribing foreign public officials. The proceeding including criminal proceedings and proceedings in which extensive asset holdings have been restrained under the *Proceeds of Crimes Act 2002* (Cth) and its mutual international analogues.

## German supermarket

I recently acted for a large German supermarket chain in proceedings arising out of the termination of a contract for the sale of land. I was led at different times by Gareth Beacham QC and Sean Cooper QC. The matter settled at a mediation before a trial listed to commence in February 2021.

## Public law

I recently acted for a small private hospital in proceedings against NIB Health Funds Ltd. The parties disagreed on the interpretation of subordinate legislation. I appeared with Douglas Campbell QC in proceedings before the Federal Court in which my client was successful.

[Rehabilitation Medicine Australia Pty Ltd v N I B Health Funds Ltd \(No 2\)](#) [2020] FCA 1761

## Queensland Coal Mining Board of Inquiry

I recently appeared on behalf of several witnesses who have received notices to produce documents and to give evidence before the Queensland Coal Mining Board of Inquiry.

## OTHER CASES AND EXPERIENCE

### General Commercial

I maintain a general commercial practice which involves general advisory and appearance work across the spectrum of commercial law. I have been briefed on behalf of large corporations, professional advisors and high net worth individuals in proceedings of all kinds. Examples include:

1. Acting for professionals defending claims of negligence.
2. Acting for a large mining company in the Supreme Court of Queensland in proceedings concerning a mineral development licence valued in excess of \$1B.
3. Acting for the plaintiff in proceedings in the Queensland Supreme Court to recover monies invested by the plaintiff after being provided with forged public documents.

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4. Acting in proceedings in the Supreme Court of Queensland for the Japanese siblings of a deceased estate where there were significant real property holdings both in Japan and Australia. There were associated proceedings in the District Court of Japan with respect to the validity of a will. The matter involved translators, issues of foreign law and issues of *forum non conveniens*.
5. Several proceedings for relief under sections 232 and 461(1)(k) of the *Corporations Act* and similar proceedings in respect of joint ventures and partnerships. See, for example: [Posgate v Hanson](#) [2018] QSC 51.
6. Proceedings in connection with real property and commercial assets, including contracts for the sale of land or businesses, leasing disputes, and applications for relief against forfeiture, applications in respect of caveats or allegations of misleading and deceptive conduct in connection with related transactions. See, for example: [Meridien Airlie Beach Pty Ltd \(in liq\) v Karamist Pty Ltd](#) [2016] 2 QdR 412; [2015] QCA 192.

#### **Managed Investment Scheme**

I acted for the director of a responsible entity of an illiquid managed investment scheme in proceedings brought by ASIC and related Federal Court claims in which damages in excess of \$160M were sought. I was briefed with Paul McQuade QC. The matter settled shortly before trial at a mediation.

#### **Failed investment scheme**

I acted for the plaintiff in proceedings on the commercial list in the Supreme Court of New South Wales in with respect to a failed investment scheme involving allegations of breaches of fiduciary duties, breaches of statutory duties, tracing and damages in excess of \$10M. I was briefed with Roger Marshall SC.

#### **Regulatory prosecutions**

I have briefed to both defend and prosecute many offences under the *Corporations Act*, the *Australian Securities and Investments Commission Act*, the *Competition and Consumer Act*, the *Planning Act*, the *Work Health and Safety Act*, the *Fire and Emergency Services Act*, taxation legislation, local government laws and other discipline specific regulatory legislation. I am regularly briefed at the early stages of such processes including to appear at compulsory examinations.

I have also been briefed to advise and appear in matters where indemnity under policies of insurance and deeds of access and indemnity have arisen in the course of regulatory investigations and prosecutions.

#### **Bankruptcy & Insolvency**

I have acted for trustees in bankruptcy in applications to remove them from their appointment. I have also acted for trustees in connection with the administration of the bankruptcy. See, for example: [Perovich v Whitton \(No 2\)](#) (2016) 250 FCR 272; [2016] FCAFC 152.

I have also acted in many insolvency related proceedings, including for insolvency professionals, creditors and directors. See, for example: [Sutherland v JOT Property Solutions Pty Ltd](#) [2016] 1 Qd R 353; [2015] QSC 249.

#### **Subpoenas and like issues**

I am regularly briefed to appear for corporations that have received subpoenas to produce documents in circumstances where the entity has no other connection with the relevant proceeding. I am also briefed for such clients in respect of other vexatious quasi-criminal proceedings initiated by private citizens. See, for example: [Evans v NBN Co. Limited](#) [2021] QDC 227; [Wood v Robertson O’Gorman Solicitors Pty Ltd](#) [2022] QSC 24.

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## Reputation, crisis management and sensitive issues

I have acted for multinational organisations, judicial officers, public figures, captains of industry and other lawyers in matters where allegations of wrongdoing have been made or might be made. This work often calls for urgent strategic advice provided in consultation with senior counsel where utmost discretion is required.

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